

1 Mike Winsor
2 Montana State Auditor's Office
3 840 Helena Avenue
4 Helena, MT 59601
5 (406) 444-2004

6 Attorney for the Department of Insurance

7 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**
8 **STATE AUDITOR'S OFFICE**
9 **STATE OF MONTANA**

10 IN THE MATTER OF THE PROPOSED
11 AGENCY ACTION REGARDING THE
12 INSURANCE PRODUCER'S LICENSE OF
13 LINDA A. LUCOTCH, License #906713

INS-2009-74

**TEMPORARY ORDER TO
CEASE AND DESIST AND
OPPORTUNITY FOR HEARING**

14 The State Auditor and Commissioner of Insurance of the state of Montana
15 (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. §
16 33-1-101, *et seq.*, hereby sets forth the following allegations of fact, conclusions of law, order to
17 cease and desist, and notice of right to a hearing:

18 **ALLEGATIONS OF FACT**

19 1. At all times material hereto, Insurance Producer, Linda A. Lucotch (Lucotch) was
20 employed by Central Montana Insurance Center (CMIC) in Lewistown, Fergus County, Montana.

21 2. In April of 2009, CMIC bookkeeper Barb Burley (Burley) found inconsistencies
22 within the bookkeeping. CMIC found that checks appearing to be written to an insurance
23 company were in fact written to Lucotch and cashed by Lucotch.

24 3. On or about April 27, 2009, CMIC owners Ray Pryor and Bruce Marshall (Marshall)
25 along with Burley met with Lucotch regarding their concerns that she had been embezzling from
26 the CMIC premium trust account. Lucotch admitted taking money and advised that she would
27 pay it all back.

1 4. On April 27, 2009 Lucotch e-mailed Pryor at CMIC advising that she was sorry for the
2 mess she created and a check for \$52,000.00 was on the way.

3 5. On April 29, 2009 Lucotch again contacted Pryor at CMIC and advised that she had
4 \$52,000.00 but a 48 hour hold was put on the deposit.

5 6. On April 30, 2009, Lucotch provided CMIC a cashiers check to CMIC for
6 \$52,000.00.

7 7. On May 1, 2009, Lucotch's employment was terminated by CMIC.

8 8. On or about May 1, 2009, CMIC partner Ray Pryor (Pryor) contacted Fergus County
9 Attorney Tom Meisner with concerns that an employee, Lucotch, had embezzled from their
10 premium trust account. Lewistown Police Department Patrolman Scott Murray was assigned the
11 case and completed the investigation.

12 9. On June 24, 2009 a Warrant was issued through Fergus County District Court for the
13 arrest of Lucotch. Lucotch was arrested on July 7, 2009 in Cascade County, Montana.

14 10. On September 18, 2009, Commissioner of Securities and Insurance Licensing Chief
15 Pam Daugherty received a call from Fergus County Deputy County Attorney Jean Adams
16 (Adams) with information that insurance producer Linda Lucotch (Lucotch) had been charged
17 with embezzling insurance premiums from CMIC's premium trust account (CMIC). It was also
18 brought to the attention of the Insurance Department (Department) that Lucotch was working at
19 the Cogswell Agency in Great Falls, Montana. Thereafter, the matter was referred to the State
20 Auditor's Legal and Investigations divisions.

21 11. On September 23, 2009, Investigator John Forsman (Forsman) met with Adams at
22 her office in the Fergus County Courthouse. Adams provided Forsman with copies of the Police
23 Department reports provided to her by Patrolman Murray.

24 12. Department investigation and review of the criminal complaint against Lucotch
25 revealed that, during the act of embezzlement from CMIC, in the time period from approximately
26 April of 2006 through February of 2009, Lucotch falsified 33 payments from CMIC so it would
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1 appear that CMIC paid premiums from the CMIC premium trust account to various policies
2 (which were fictitious) when in fact she made the payments to herself.

3 13. Lucotch executed and concealed her scheme by creating fictitious policyholder
4 accounts, writing checks to herself from the premium trust account, intercepting CMIC bank
5 statements, whiting-out the endorsee (herself) in the copies of the checks enclosed with the bank
6 statements, writing in an insurance company name as the endorsee, and re-copying the statement
7 check copies, so it would appear, to CMIC, from the bank statement materials that the checks
8 were written by Lucotch to the insurance company on behalf of policyholders.

9 14. On November 18, 2009, Department Chief Investigator John Forsman contacted
10 Lucotch at the Cogswell Agency and informed her that he wanted to talk to her. Lucotch refused
11 to speak to Forsman and instructed Forsman to contact her attorney.

12 CONCLUSIONS OF LAW

13 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-
14 15-1903.

15 2. The Montana Insurance Department is under the control and supervision of the
16 Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

17 3. The Commissioner and Insurance Department have jurisdiction over this matter.
18 Mont. Code Ann. § 33-1-311.

19 4. The Commissioner shall administer the Insurance Department to protect insurance
20 consumers. Mont. Code Ann. § 33-1-311(3).

21 5. Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact
22 a business of insurance in Montana or a business relative to a subject resident, located, or to be
23 performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. §
24 33-1-101, *et seq.*

6. The Commissioner may suspend, revoke, refuse to renew, refuse to issue an insurance producer's license, may levy a civil penalty in accordance with Mont. Code Ann. § 33-1-317, or may choose any combination of actions when an insurance producer has:

engaged in an act or practice for which issuance of the license could have been refused, violated or failed to comply with a provision of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*;

improperly withheld, misappropriated, or converted to the licensee's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license or in the conduct of the affairs under the license; or

used fraudulent, coercive, or dishonest practices, or when the licensee is a sources of injury or loss to the public.

Mont. Code Ann. § 33-17-1001(1)(a), (c), and (f).

7. Lucotch committed multiple violations of Mont. Code Ann. § 33-17-1001(1), during the course of embezzling from her employer. By embezzling from her employer, CMIC, and falsifying payments from CMIC so as to create the appearance she was making premium payments on (fictitious) policies when in fact she made the payments to herself, Lucotch violated Mont. Code Ann. § 33-17-1001(1)(a),(c), and (f).

8. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose a fine not to exceed the sum of \$25,000 upon a person found to have violated a provision of this code or regulation promulgated by the commissioner, except that the fine imposed upon insurance producers or adjusters may not exceed \$5,000 per violation.

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1 **CEASE AND DESIST ORDER**

2 Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Department that the above-
3 named Respondent has engaged, is engaged or is about to engage in acts or practices constituting
4 violations of the Montana Insurance Code Mont. Code Ann. § 33-1-101 *et seq.*,

5 1. Therefore, it is hereby ORDERED that the Respondent shall immediately cease and
6 desist from:

7 a. engaging or transacting the business of insurance including the collection of premiums
8 or other consideration, issuance of insurance and insurance-related products;

9 b. participating directly or indirectly in any act of an insurance producer; and

10 c. engaging in other any act, practice, or course of business that violates any section of the
11 Montana Insurance Code.

12 2. This Order is effective immediately and shall continue in full force and effect until
13 further order of the Insurance Commissioner.

14 **PENALTIES**

15 Pursuant to Mont. Code Ann. § 33-1-318 , a violation of this Order is a separate violation
16 for which the Commissioner may impose a fine not to exceed \$5,000 per violation in addition to
17 other penalties imposed by law.

18 **NOTICE OF RIGHT TO HEARING**

19 You are entitled to a hearing and to respond to this Temporary Cease and Desist Order
20 and to present evidence and arguments on all issues involved in this case. If you wish to contest
21 the allegations herein, you must make a written request for a hearing within 15 days of receipt of
22 this Order to Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office,
23 840 Helena, Avenue, Helena, MT 59601. The hearing shall then be held within 20 days of the
24 Commissioner's receipt of the hearing request, unless the time is extended by agreement of the
25 parties. If you do not request a hearing and the Commissioner orders none, this Order shall
26 become permanent, and the above allegations will be declared the findings of fact and the above
27 conclusions of law will be declared the final conclusions of law.
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1 Should you request a hearing, you have the right to be accompanied, represented and
2 advised by an attorney. If the attorney you choose has not been admitted to the practice of law in
3 the state of Montana, she or he must comply with the Montana State Bar for appearing *pro hac*
4 *vice* and the requirements of *Application of American Smelting and Refining, Co.*, 164 Mont.
5 139, 520 P.2d 103 (1973) and *Montana Supreme Court Commission on the Unauthorized*
6 *Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006). If you request a
7 hearing, you will be given notice of the date, time, and place of the hearing.

8 DATED this 25 day of November, 2009.

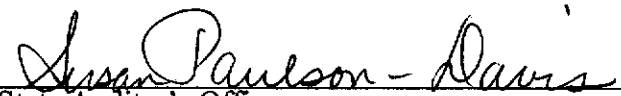
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10 MONICA J. LINDEEN
State Auditor and Commissioner of Insurance

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12 By: 
13 WALTER SCHWEITZER
14 Deputy State Auditor

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the 25th day of November, 2009, I served,
17 pursuant to Rule 4D(1)(b), MRCP, a true and accurate copy of the foregoing Temporary Order to
18 Cease and Desist and Opportunity for Hearing upon the Respondent, by mailing the same to the
19 Respondent's attorney together with a Notice and Acknowledgment of Service by mail at the
20 following address:
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22 Jon A. Oldenburg, Esq.
23 505 W. Main, Ste. 309
Lewistown, MT 59457

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26 State Auditor's Office
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